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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION
13

14 In re NVIDIA CORPORATION SECURITIES
LITIGATION
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16 _____

17 This Document Relates to: All Actions.
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Case No. 4:18-cv-07669-HSG

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS PLAINTIFFS' FIRST
AMENDED CONSOLIDATED CLASS ACTION
COMPLAINT**

Date: October 15, 2020
Time: 2:00 p.m.
Place: Courtroom 2
Judge: Hon. Haywood S. Gilliam, Jr.

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Argument	1
A. Plaintiffs Have Failed To Allege Scienter	1
1. Plaintiffs Still Fail To Allege Scienter As To Fisher Or Kress.....	1
2. Plaintiffs Still Fail To Allege Scienter As To Huang	2
3. FE Allegations Do Not Support An Inference Of Scienter.....	6
4. The Challenged Statements Do Not Support An Inference Of Scienter.....	7
5. The Core Operations Doctrine Does Not Apply	9
6. Plaintiffs' Theory Of Fraud Is Less Compelling Than The Nonculpable Explanation	9
B. Plaintiffs Have Failed To Allege Falsity.....	10
1. Plaintiffs Still Have Not Cured The Pleading Deficiencies As To Prysm	11
2. Plaintiffs Do Not Otherwise Adequately Allege Falsity.....	16
C. Plaintiffs' Control Person Claim Still Fails	20
III. Conclusion	20

TABLE OF AUTHORITIES

Page(s)

Cases

<i>In re Apple Comput. Sec. Litig.</i> , 886 F.2d 1109 (9th Cir. 1989).....	17
<i>In re Aqua Metals, Inc. Sec. Litig.</i> , 2019 WL 3817849 (N.D. Cal. Aug. 14, 2019).....	20
<i>Avila v. LifeLock Inc.</i> , 2016 WL 4157358 (D. Ariz. Aug. 3, 2016).....	16
<i>Bao v. Solarcity Corp.</i> , 2016 WL 4192177 (N.D. Cal. Aug. 9, 2016).....	5
<i>Berson v. Applied Signal Technology, Inc.</i> , 527 F.3d 982 (9th Cir. 2008).....	16
<i>Bodri v. GoPro, Inc.</i> , 252 F. Supp. 3d 912 (N.D. Cal. 2017)	10
<i>Bolling v. Dendreon Corp.</i> , 2014 WL 2533323 (W.D. Wash. June 5, 2014).....	8
<i>Brodsky v. Yahoo! Inc.</i> , 592 F. Supp. 2d 1192 (N.D. Cal. 2008)	11
<i>Browning v. Amyris, Inc.</i> , 2014 WL 1285175 (N.D. Cal. Mar. 24, 2014).....	5
<i>Chang v. Accelerate Diagnostics, Inc.</i> , 2016 WL 3640023 (D. Ariz. Jan. 28, 2016)	17
<i>City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.</i> , 65 F. Supp. 3d 840 (N.D. Cal. 2014)	18
<i>City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.</i> , 856 F.3d 605 (9th Cir. 2017).....	2, 18, 19, 20
<i>City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.</i> , 880 F. Supp. 2d 1045 (N.D. Cal. 2012)	16
<i>Curry v. Yelp Inc.</i> , 2015 WL 1849037 (N.D. Cal. Apr. 21, 2015)	17
<i>In re Daou Sys., Inc.</i> , 411 F.3d 1006 (9th Cir. 2005).....	13
<i>In re Finisar Corp. Sec. Litig.</i> , 2017 WL 1549485 (N.D. Cal. May 1, 2017)	8

TABLE OF AUTHORITIES
(continued)

		Page(s)
1		
2		
3	<i>Gregory v. ProNAi Therapeutics Inc.</i> ,	
4	297 F. Supp. 3d 372 (S.D.N.Y. 2018).....	19
5	<i>Guangyi Xu v. ChinaCache Int’l Holdings Ltd.</i> ,	
6	2017 WL 114401 (C.D. Cal. Jan. 9, 2017)	16
7	<i>Hernandez v. Schaad</i> ,	
8	2017 WL 6731624 (N.D. Cal. Dec. 29, 2017)	12
9	<i>Hussey v. Ruckus Wireless, Inc.</i> ,	
10	263 F. Supp. 3d 781 (N.D. Cal. 2017)	16
11	<i>In re Immune Response Sec. Litig.</i> ,	
12	375 F. Supp. 2d 983 (S.D. Cal. 2005)	17
13	<i>Institutional Inv’rs Grp. v. Avaya, Inc.</i> ,	
14	564 F.3d 242 (3d Cir. 2009).....	8
15	<i>In re Intel Corp. Sec. Litig.</i> ,	
16	2019 WL 1427660 (N.D. Cal. Mar. 29, 2019).....	17
17	<i>Iron Workers Local 580 Joint Funds v. NVIDIA Corp.</i> ,	
18	2020 WL 1244936 (N.D. Cal. Mar. 16, 2020).....	<i>passim</i>
19	<i>Lipton v. Pathogenesis Corp.</i> ,	
20	284 F.3d 1027 (9th Cir. 2002).....	4, 10
21	<i>Lloyd v. CVB Fin. Corp.</i> ,	
22	2012 WL 12883522 (C.D. Cal. Jan. 12, 2012)	9
23	<i>Martin v. Quartermain</i> ,	
24	732 F. App’x 37 (2d Cir. 2018)	19
25	<i>In re Nektar Therapeutics</i> ,	
26	2020 WL 3962004 (N.D. Cal. July 13, 2020).....	9
27	<i>No. 84 Employer-Teamster Joint Council Pension Tr. Fund v. Am. W. Holding Corp.</i> ,	
28	320 F.3d 920 (9th Cir. 2003).....	10
	<i>Norfolk Cty. Ret. Sys. v. Solazyme, Inc.</i> ,	
	2016 WL 7475555 (N.D. Cal. Dec. 29, 2016)	5
	<i>Norfolk Cty. Ret. Sys. v. Solazyme, Inc.</i> ,	
	2018 WL 3126393 (N.D. Cal. June 26, 2018)	2, 3
	<i>Nursing Home Pension Fund, Local 144 v. Oracle Corp.</i> ,	
	380 F.3d 1226 (9th Cir. 2004).....	2, 5, 15
	<i>Okla. Firefighters Pension & Ret. Sys. v. Ixia</i> ,	
	2015 WL 1775221 (C.D. Cal. Apr. 14, 2015)	9

TABLE OF AUTHORITIES
(continued)

Page(s)

<i>Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund</i> , 575 U.S. 175 (2015).....	16, 19
<i>In re Peregrine Sys., Inc. Sec. Litig.</i> , 2005 WL 8158825 (S.D. Cal. Mar. 30, 2005)	10
<i>Pierrelouis v. Gogo, Inc.</i> , 414 F. Supp. 3d 1164 (N.D. Ill. 2019)	5
<i>Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc.</i> , 759 F.3d 1051 (9th Cir. 2014).....	4
<i>Provenz v. Miller</i> , 102 F.3d 1478 (9th Cir. 1996).....	17
<i>In re Quality Sys., Inc. Sec. Litig.</i> , 865 F.3d 1130 (9th Cir. 2017).....	2
<i>Reese v. Malone</i> , 747 F.3d 557 (9th Cir. 2014).....	2, 8
<i>In re Resonant Inc. Sec. Litig.</i> , 2016 WL 6571267 (C.D. Cal. July 11, 2016)	13
<i>In re Resonant Inc. Sec. Litig.</i> , 2016 WL 6603953 (C.D. Cal. Sept. 6, 2016).....	13
<i>Robb v. Fitbit Inc.</i> , 2017 WL 219673 (N.D. Cal. Jan. 19, 2017)	4
<i>S. Ferry LP #2 v. Killinger</i> , 687 F. Supp. 2d 1248 (W.D. Wash. 2009).....	8, 9
<i>S. Ferry LP, No. 2 v. Killinger</i> , 542 F.3d 776 (9th Cir. 2008).....	9
<i>Shenwick v. Twitter, Inc.</i> , 282 F. Supp. 3d 1115 (N.D. Cal. 2017)	4, 8, 17
<i>In re Silicon Storage Tech., Inc., Sec. Litig.</i> , 2007 WL 760535 (N.D. Cal. Mar. 9, 2007).....	14
<i>In re Snap Inc. Sec. Litig.</i> , 2018 WL 2972528 (C.D. Cal. June 7, 2018)	20
<i>In re Vantive Corp. Sec. Litig.</i> , 283 F.3d 1079 (9th Cir. 2002).....	4
<i>Veal v. Lendingclub Corp.</i> , 2020 WL 3128909 (N.D. Cal. June 12, 2020)	15

TABLE OF AUTHORITIES
(continued)

Page(s)

In re Wash. Mut., Inc. Sec., Derivative & ERISA Litig.,
694 F. Supp. 2d 1192 (W.D. Wash. 2009)..... 14

Waterford Twp. Police v. Mattel, Inc.,
321 F. Supp. 3d 1133 (C.D. Cal. 2018) 19

Wozniak v. Align Tech., Inc.,
850 F. Supp. 2d 1029 (N.D. Cal. 2012) 4

In re YogaWorks, Inc. Sec. Litig.,
2020 WL 2549290 (C.D. Cal. Apr. 23, 2020) 12

Zucco Partners, LLC v. Digimarc Corp.,
552 F.3d 981 (9th Cir. 2009)..... 6

Statutes

15 U.S.C.
§ 78u-4(b) (PSLRA)..... *passim*

Other Authorities

Fed. R. Civ. P. 9(b) 13

1 **I. INTRODUCTION**

2 At the hearing on Defendants’ Motion to Dismiss the CAC, the Court observed that
3 Plaintiffs’ allegations had generated some “smoke,” but cautioned that the “PSLRA requires what
4 it requires.” MTD Hearing Tr. at 4 (Dec. 6, 2019) (Dkt. 143). The Court dismissed the CAC for
5 failure to allege falsity or scienter with the requisite particularity. In the FAC, Plaintiffs point to the
6 same smoke from a variety of different angles, but, again, fail to satisfy the PSLRA. The Opposition
7 largely regurgitates pages of the FAC’s allegations and urges the Court to take an impressionistic,
8 high-level view of them every step of the way, whether in evaluating statements attributed to former
9 NVIDIA employees, the reliability of estimations of NVIDIA’s internal financial data by Plaintiffs’
10 outside “experts” at Prysm Group, or the actual content and context of Defendants’ statements that
11 Plaintiffs claim were false. Plaintiffs are sophisticated investors who experienced temporary losses
12 when NVIDIA’s stock price fell; but the federal securities laws do not amount to an insurance
13 policy for such losses. The FAC fails for the same reason the Court dismissed the CAC: when
14 reviewed for the detail and sensibility required by the PSLRA, it falls apart. Plaintiffs’ second
15 attempt to plead more than just “smoke” fails. The FAC should be dismissed with prejudice.

16 **II. ARGUMENT**

17 **A. Plaintiffs Have Failed To Allege Scienter**

18 This Court dismissed Plaintiffs’ CAC because (among other things) Plaintiffs failed to
19 allege particularized facts showing that, when the speakers made the challenged statements, they
20 were aware of facts that allegedly rendered those statements materially false or misleading. *Iron*
21 *Workers Local 580 Joint Funds v. NVIDIA Corp.*, 2020 WL 1244936 (N.D. Cal. Mar. 16, 2020)
22 (“Order”) at *9-12. Nothing in Plaintiffs’ Opposition supports a different result here.

23 **1. Plaintiffs Still Fail To Allege Scienter As To Fisher Or Kress**

24 Plaintiffs do not dispute that the FAC fails to make a single new allegation relevant to
25 Fisher’s state of mind when he spoke. Mot. at 13; *see* Order at *10; ¶ 176.¹ The FAC offers nothing

26 ¹ Plaintiffs also continue to ignore that, when Fisher made his sole challenged statement on May
27 10, 2017, on the first day of the 18-month Class Period and ten days into a new fiscal quarter, the
28 “facts” they claim he omitted did not even conceivably exist. (¶¶ 177-78 (referencing total alleged
 crypto-related sales for all of that fiscal quarter, GFE data “during the Class Period,” and a China
 GeForce revenue estimate derived from a September 2017 internal presentation).)

1 new regarding Kress’s scienter. Plaintiffs do not contest that FE-1 (who allegedly said that Kress
2 had “authority” to access a sales database, ¶ 84) never communicated with her and thus lacks any
3 personal knowledge as to her state of mind. Mot. at 18; *see* Order at *10. Plaintiffs also fail to
4 dispute that they have not made a single particularized allegation about what this database allegedly
5 showed at any time. Mot. at 14. Plaintiffs do argue that Kress’s pre-Class Period Statements about
6 GFE software (¶¶ 107-08) are not rendered categorically irrelevant by their timing (Opp. at 9 n.6),
7 but that is a *non sequitur*. Those comments did not address mining usage, and Plaintiffs do not
8 allege that she ever had access to, much less received, any particular mining-related GFE data.

9 2. Plaintiffs Still Fail To Allege Scienter As To Huang

10 Plaintiffs primarily argue Huang’s scienter on the theory that he had “access” to five sources
11 of information about “crypto-related GeForce sales.” Opp. at 1, 6-11. In other words, Plaintiffs
12 allege that Huang *could have* or *might have* seen information having something to do with miners
13 buying GeForce chips. *Id.* The PSLRA requires more than speculation. Plaintiffs must allege facts
14 showing that Huang *actually did have* contradictory information when he made the challenged
15 statements.² *See, e.g., Norfolk Cty. Ret. Sys. v. Solazyme, Inc.*, 2018 WL 3126393, at *8 (N.D. Cal.
16 June 26, 2018) (no scienter absent allegation “[CWs] shared the purportedly contradictory
17 information with the Defendants before they made the challenged statements”); *City of Dearborn*
18 *Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605, 620 (9th Cir. 2017) (no
19 scienter absent allegation defendants “personally accessed” contradictory data). And Plaintiffs must
20 allege Huang received *specific* information that put him on notice that his public statements were
21 false. *See, e.g.,* Order at *11 n.3; *infra* pp. 4-5. The FAC fails on both fronts.

22 To gloss over this problem, Plaintiffs cite allegations in the FAC describing various
23 “numerical details” about GeForce purchases by miners. Opp. at 15-16. The FAC stops short of
24 alleging—even conclusorily—that Huang received the vast majority of this information.³ In fact,

25 ² None of Plaintiffs’ cases show that “access” to data is enough for scienter. Opp. at 6; *In re Quality*
26 *Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1145 (9th Cir. 2017) (CWs alleged defendants “used” reports;
27 defendants stated they had “knowledge” of information); *Reese v. Malone*, 747 F.3d 557, 572 (9th
28 Cir. 2014) (defendant publicly “specifically addressed” corrosion-rate data at issue); *Nursing Home*
Pension Fund, Local 144 v. Oracle Corp., 380 F.3d 1226, 1231 (9th Cir. 2004) (defendants publicly
admitted to monitoring global database; plaintiffs pled “hard numbers” regarding data in dispute).

³ Opp. at 15-16 (¶ 154 (Prysm estimate of crypto-related revenue by quarter, prepared after Class

1 Plaintiffs identify only two “numerical details” with any supposed link to Huang at all: (1) FE-1’s
2 alleged statement that “sales data” showed 60-70% of GeForce revenue *in China* “throughout
3 2017” was from miners (¶ 86); and (2) FE-5’s alleged statement that GFE “usage data” showed
4 “over 60% of GeForce GPU sales during the Class Period were to miners” (¶ 106). Opp. at 9-10,
5 14 n.8. But as discussed *infra*, Plaintiffs fail to allege anything to suggest that Huang actually had
6 such data when he made any challenged statement, and the allegations lack the specificity required.

7 **Database, Quarterly Meetings, and “Top 5” Emails:** Plaintiffs purport to describe a sales
8 database, quarterly meetings, and periodic “Top 5” emails, each of which allegedly contained some
9 information about miners purchasing GeForce GPUs. Opp. at 7-10. But Plaintiffs allege no facts
10 showing that Huang was actually privy to much of this,⁴ and provide no meaningful detail about
11 the *contents* of any of it.⁵ As such, they do not plead that Huang was aware of information that
12 contradicted any of his public statements.⁶ Mot. at 14-15, 18-22; *see Norfolk Cty.*, 2018 WL
13 3126393, at *8 (references to “conference calls” and “updates” insufficient where complaint “fail[s]
14 to identify any call, meeting or other type of communication (1) participated in by both [CW] and
15 [speaker], (2) prior to the [challenged] statements, and (3) disclosing information contradicted by
16

17 Period); ¶ 114 (forecast of 2018 GeForce sales due to mining-related demand, not alleged to have
18 ever been provided to Huang); ¶¶ 119-26 (facts about China sales from internal presentation, not
19 alleged to have ever been provided to Huang); ¶ 131 (estimate of Gaming GPUs sold in Russia, not
20 alleged to have ever been provided to Huang, alleged source of which (social media manager in
21 Russia) had no alleged contact with Huang); ¶ 132 (estimate of GeForce revenue in India, not
22 alleged to have ever been shared with Huang or even prepared during Class Period).)

23 ⁴ As to the sales database, for example, Plaintiffs rely on FE-2’s vague recollection of Huang’s
24 acting turn in a Salesforce training video. This allegation is insufficient as pled, as the video
25 underscores. Mot. 19-20; Ex. NN. Even the (clearly tongue-in-cheek) video does not depict Huang
26 accessing any database—he calls someone else to request a report. Opp. at 7, 14 & n.3; Ex. NN.

27 ⁵ For example, the Opposition alludes to allegations about the “content and frequency of
28 cryptocurrency-related discussions” in “Top 5” emails (Opp. at 9 n.4), but the FAC itself identifies
zero details about or facts in any such emails that would have put Huang on notice that any given
challenged statement was false. *Id.*; ¶¶ 94-98. At most, the FAC indicates there was some
discussion of some mining-related GeForce orders in some “Top 5” emails Huang received at some
unknown points in 2017 and 2018. This is consistent with his public statements. *E.g.*, Mot. at 31.

⁶ The absence of any allegations about specific crypto-related GeForce sales data makes sense,
given what the Court has previously observed (and what Plaintiffs elsewhere acknowledge):
“NVIDIA does not sell its GPUs directly to consumers” but instead has a complex distribution
channel, and NVIDIA makes sales almost exclusively not to any type of end users but to
“wholesalers, retailers, or internet platforms.” (¶ 42; Order at *2; Mot. at 9, 12-13 & n.6.)

1 those statements.”); *Wozniak v. Align Tech., Inc.*, 850 F. Supp. 2d 1029, 1042 (N.D. Cal. 2012) (no
2 scienter based on receipt of “daily ‘run-rate’ reports” without “data or other detail”).

3 Faced with this pleading deficiency, Plaintiffs wrongly argue that the law does not require
4 such particularity. Opp. at 15. But this Court has already recognized that, in order to plead scienter
5 here, Plaintiffs must supply “specific allegations as to the content of the data [quantifying GeForce
6 GPUs being used for gaming versus mining].”⁷ Order at *11 n.3 (citing *Lipton v. Pathogenesis*
7 *Corp.*, 284 F.3d 1027, 1036 (9th Cir. 2002)). Plaintiffs’ citations to *Shenwick v. Twitter, Inc.* and
8 *Robb v. Fitbit Inc.* (Opp. at 15) do not help their cause. The *Robb* plaintiffs specifically alleged that
9 a CW hired to test the accuracy of a heart-rate tracking device sent monthly reports directly to
10 management detailing “significant issues with the accuracy.” 2017 WL 219673, at *4 (N.D. Cal.
11 Jan. 19, 2017). Plaintiffs cite *Shenwick*’s discussion of falsity, not scienter, which does not address
12 the “strong inference” requirement. 282 F. Supp. 3d 1115, 1137-38 (N.D. Cal. 2017). In any event,
13 the *Shenwick* plaintiffs specifically alleged that statements regarding one user metric (Monthly
14 Active Users) were rendered misleading by the failure to disclose a negative trend in another user
15 metric (Daily Active Users or DAU) that raised questions about the viability of the product user
16 base. *Id.* at 1127-32, 1137. And contemporaneous statements by the speakers indicated they
17 possessed the adverse DAU data when they made the allegedly misleading statements. *Id.* at 1147.
18 The allegations in both of those cases contained the specificity sorely lacking in the FAC.

19 **“Throughout 2017” China Sales Data:** Plaintiffs make no effort to explain if, when, or
20 how Huang actually learned the alleged “60-70%” China mining sales figure. Opp. at 10 (Huang
21 allegedly “had access” to database); *see supra* p. 2 & n.2. Plaintiffs also ignore that this same figure
22 was in the CAC, which the Court deemed “not indicative of scienter.” Order at *10; Mot. at 18-19
23 & n.15. And Plaintiffs do not try to explain how the Court could conclude, from a general allegation
24 about revenue “throughout” 2017 (only partly in the Class Period, and during which mining demand
25 indisputably fluctuated), what mining-related revenue was at the time of any of Huang’s challenged
26

27 ⁷ *See also, e.g., In re Vantive Corp. Sec. Litig.*, 283 F.3d 1079, 1087-88 (9th Cir. 2002) (mere
28 existence of periodic reports, without specifics as to contents, insufficient for scienter); *Police Ret.*
Sys. of St. Louis v. Intuitive Surgical, Inc., 759 F.3d 1051, 1063 (9th Cir. 2014).

1 statements.⁸ Mot. at 19 & n.15, 21 & n.16; *see, e.g., Browning v. Amyris, Inc.*, 2014 WL 1285175,
2 at *12 (N.D. Cal. Mar. 24, 2014) (insufficient to allege defendants knew fact “during” class period).

3 Further, Plaintiffs still attempt to rely on data from a single, outlier market (China) to
4 challenge Huang’s statements about NVIDIA’s worldwide business. *See* Order at *9 (data about
5 crypto-related GeForce sales in China cannot be easily extrapolated to sales worldwide); Mot. at
6 12-13 & n.6. Plaintiffs rely solely on *Nursing Home* (Opp. at 10-11), but that case does not stand
7 for the broad proposition that data from a “primary market” is “sufficient” to show scienter, and is
8 wholly distinguishable. Unlike in *Nursing Home* (where most challenged statements focused on the
9 U.S.), here none of the challenged statements address China. 380 F.3d at 1228, 1231 & n.1. While
10 the *Nursing Home* court found that U.S. data offered a “substantial window” into the company’s
11 financials because it accounted “for approximately half of [its] annual revenue,” *id.* at 1231, the
12 FAC alleges that GeForce sales to miners in China accounted for “25% to 35% of NVIDIA’s
13 worldwide GeForce revenue” in 2017, meaning only 14% to 20% of global revenue. (Ex. W at 74;
14 ¶ 86.) And Plaintiffs have conceded that mining activity was concentrated in China. Order at *9;
15 Mot. at 12-13 & n.6. There is simply no basis to deem mining demand in China to be representative
16 of NVIDIA’s business worldwide. Finally, *Nursing Home* held that allegations about U.S. sales
17 created a strong inference of scienter *only* “[i]n combination with” “astronomical” stock sales (\$900
18 million) “highly inconsistent” with the defendant’s trading history, and, “very importantly,”
19 improper revenue accounting records. *Id.* at 1231-33. There are no such allegations here.

20 **GFE “Usage Data”:** Plaintiffs also fail to plead that Huang ever actually received any GFE
21 data showing “that over 60% of GeForce GPU sales during the Class Period were to miners,” when
22 he received it, or that a report reflecting such data ever even existed. Mot. at 22; *see supra* p. 2 &
23 n.2. Courts have rejected similar allegations for insufficient specificity; the Opposition makes no
24 attempt to distinguish this precedent. Mot. at 21; *see also Norfolk Cty. Ret. Sys. v. Solazyme, Inc.*,

25 ⁸ *See also Pierrelouis v. Gogo, Inc.*, 414 F. Supp. 3d 1164, 1175-76 (N.D. Ill. 2019) (allegations
26 insufficient to “answer the critical question of when defendants had sufficient knowledge to put
27 them on notice” of contradictory facts); *Bao v. Solarcity Corp.*, 2016 WL 4192177, at *6, *10 (N.D.
28 Cal. Aug. 9, 2016) (allegations defendants “knew that some sales were, at times, unprofitable” did
not show they “knew of the entire segment’s underperformance and therefore should have known
of the falsity of their public statements”).

1 2016 WL 7475555, at *3 (N.D. Cal. Dec. 29, 2016) (“Generically asserting in an undifferentiated
2 manner that facts occurred ‘during the Class Period’ is insufficient.”). Plaintiffs also fail to allege
3 that the GFE software could track when and to whom a GPU was ***sold***, rather than how it was ***used***.
4 Mot. at 22. The Opposition protests that Plaintiffs need not provide a “technical” explanation of
5 GFE, but this misses the point; the facts the FAC does allege about GFE are completely inconsistent
6 with, and thus render implausible, the inference that it permitted quantification of sales to miners.⁹
7 (See, e.g., ¶¶ 100, 105 (GFE “optimize[s] graphics settings to improve graphics performance while
8 gaming” and was used “to determine what games were being played in different regions”).)

9 3. FE Allegations Do Not Support An Inference Of Scienter

10 Plaintiffs suggest it is somehow improper to evaluate whether each of the FEs’ allegations
11 meet the relevant pleading standards.¹⁰ Opp. at 13. But this is precisely the analysis required by the
12 PSLRA and is entirely consistent with *Tellabs*. See, e.g., Order at *10-11; see also Mot. at 16-17.
13 Considered individually or in concert, the FEs fail to support a strong inference of scienter.

14 The liberties taken in the Opposition’s FE discussions are telling. For example, the
15 Opposition is littered with references to FE-2 but simply ignores that FE-2 left the Company around
16 when the Class Period began in May 2017. (¶ 34.) FE-2 thus cannot speak to what Huang knew,
17 did or said ***during*** the Class Period. See Mot. at 20; see also *Zucco Partners, LLC v. Digimarc*
18 *Corp.*, 552 F.3d 981, 998 (9th Cir. 2009). And because the Crypto SKU launched about when FE-
19 2 left NVIDIA (¶ 6), FE-2 can offer no reliable insight into Huang’s knowledge at any point
20 regarding how many miners were purchasing GeForce GPUs as compared to the Crypto SKUs. The
21 FAC and Opposition are replete with similar examples.¹¹

22
23 ⁹ Plaintiffs’ allegation that, at some unspecified time, NVIDIA publicly stated that “mid-to-high
24 90%” of its users use GFE (Opp. at 10; ¶ 101) sheds no light on circumstances during the Class
25 Period—when, according to Plaintiffs themselves, the profile of NVIDIA’s GeForce user base
26 shifted. Plaintiffs nowhere allege what portion of GeForce users used GFE during the Class Period.

27 ¹⁰ Plaintiffs do not dispute that the FAC fails to remedy the pleading deficiencies as to FE-3 and
28 FE-4. Mot. at 20; Order at *11. Plaintiffs’ references to them should be disregarded.

¹¹ As Defendants noted in the Motion, the paragraphs in the FAC containing FE allegations include
several key sentences not attributed to anyone. Mot. at 18. For example, every sentence of
paragraph 82 is expressly attributed to something FE-5 “confirmed,” “explained” or “said” ***except***
for the only sentence that purports to link NVIDIA’s internal sales data to the statements challenged
in this case: “This ‘sell-in/sell-out’ data recorded sales throughout the distribution chain ***and***

1 While FE-5 is the only FE who is new to the FAC, the Opposition makes remarkably little
2 effort to defend the adequacy of the statements attributed to FE-5. Plaintiffs do not dispute that the
3 FAC alleges no personal knowledge for FE-5's most critical statements, such as how FE-5 learned
4 that sales data presented at certain meetings was "sent directly to Huang." Mot. at 21-22; ¶¶ 89,
5 90.¹² And, Plaintiffs do not even attempt to argue that the FAC alleges how anyone in FE-5's
6 consumer marketing position would have had personal knowledge of how GFE software usage data
7 was collected, analyzed or distributed, or what it showed. Mot. at 21; ¶¶ 105-06.

8 Evidently unable to defend their FE allegations individually, Plaintiffs argue that the various
9 FE allegations "reinforce" one another. But Plaintiffs' sole example of this—claiming FE-2's
10 memory of a sales training video "reinforces" the description by FE-1 (an account manager in
11 China) of a "sales database" to which Huang supposedly had access (Opp. at 13-14)—falls flat, as
12 it simply ignores that neither FE has personal knowledge as to Huang. Mot. at 20. No FE describes
13 the content of the alleged sales database in any detail or at any point in time. Plaintiffs vaguely add
14 that FE-5 "corroborated these accounts" (Opp. at 7), but FE-5's allegations do not mention any
15 sales database at all. Simply put, zero plus zero is still zero.

16 4. The Challenged Statements Do Not Support An Inference Of Scienter

17 Plaintiffs again attempt to rely on the fact that Defendants made the challenged statements
18 to show scienter. Opp. at 11-13. The Court should reject this argument as it did before.

19 *First*, this Court previously held that Plaintiffs could not plead scienter by merely pointing
20 to the alleged misstatements as evidence that Defendants "had access to the underlying data." Order
21 at *11. Though Plaintiffs contend otherwise (Opp. at 7), they have not remedied the key defect
22 identified in the Order: the FAC remains devoid of "particularized allegations that [Defendants]
23 were provided secondary data differentiating end user purchasers." Order at *11; *see supra*.

24
25 *allowed NVIDIA to determine the percentage of GeForce GPUs sold to crypto-miners.*" (¶ 82
26 (emphasis added).) Plaintiffs retort that the paragraphs at issue "begin[] with an unambiguous
27 attribution to a *single* FE and include[] additional references *repeating*" that attribution. Opp. at 15.
28 This provides no explanation or justification for allegations that lack any attribution. There is
simply no way for the Court to conclude that an FE or anyone else actually made those statements.
¹² Similarly, FE-5's statement that Huang "personally reviewed" GFE data was not based on FE-
5's personal knowledge but hearsay from FE-5's unnamed "superiors." (¶ 106.)

1 **Second**, Plaintiffs mischaracterize certain of Defendants’ statements, which did not purport
2 to “quantify” “crypto-related sales” in general as Plaintiffs suggest (Opp. at 11), but rather reported
3 OEM revenue from the Crypto SKU.¹³ (*See, e.g.*, ¶ 193; Ex. J at 11.) Defendants consistently
4 disclosed that some Gaming revenue was also driven by mining.¹⁴ Mot. at 19. To the extent that
5 Defendants “characterize[d] the magnitude” (Opp. at 11), they did so broadly and **disclaimed** the
6 ability to provide detailed, reliable numbers, cautioning that mining-related GeForce sales were
7 “hard to estimate” and not something they could “visibly count.”¹⁵ Mot. at 10, 23.

8 **Finally**, Plaintiffs again argue that the challenged statements reflect deliberate recklessness
9 because some were made in response to analysts’ questions, but that still provides “no basis” for
10 scienter. Order at *12; Opp. at 12-13. “[I]t does not demonstrate scienter to point out that analysts
11 asked questions about a topic.” *Bolling v. Dendreon Corp.*, 2014 WL 2533323, at *14 (W.D. Wash.
12 June 5, 2014). Plaintiffs’ argument depends on the assumption that Defendants could have reviewed
13 data reliably quantifying global sales of GeForce GPUs to mining end-users before speaking to the
14 market, but willfully abstained. Opp. at 13. Nothing in the FAC supports this. *Cf. In re Finisar*
15 *Corp. Sec. Litig.*, 2017 WL 1549485, at *6-7 (N.D. Cal. May 1, 2017) (defendants “silent” when
16 asked about inventory build-up, though reliable CWs said they “would have been given” relevant
17 information); *S. Ferry LP #2 v. Killinger*, 687 F. Supp. 2d 1248, 1259-60 (W.D. Wash. 2009)
18 (executive represented he “had all of the information necessary to make accurate predictions”).
19 Like the CAC, nothing in the FAC reflects “intentional or conscious misconduct.” Order at *12.

21
22 ¹³ Based on the allegations in the FAC, there is arguably one exception to this, but the meaning of
23 that statement is made clear by its context. In an August 12, 2017 interview, Huang stated:
24 “cryptocurrency . . . represented only a couple hundred million dollars, maybe \$150 million or so.”
25 (¶ 183; Ex. D at 3.) Two days earlier, during the quarterly earnings call, Huang had reported about
26 \$150M in Crypto SKU revenue. Opp. at 11; Ex. C at 7. As such, his reference to “cryptocurrency”
27 in the interview appears to have been an echo of his recent statement about the Crypto SKU. And
28 in any event, his interview response clearly gave a qualified and subjective estimate.

¹⁴ (*See, e.g.*, Exs. C at 4, 7; H at 9-10; J at 4; O at 13; P at 4, 10; X at 4; Y at 3; Z at 5, 8, 15, 17.)

¹⁵ *Cf. Opp.* at 11-12 (citing *Shenwick*, 282 F. Supp. 3d at 1147 (“detailed factual statements”
including that the disputed data was “dependent by market” and “similar” to what was previously
reported); *Reese*, 747 F.3d at 572 (engineer responsible for pipeline operations “specifically
addressed” corrosion-rate data in question); *Institutional Inv’rs Grp. v. Avaya, Inc.*, 564 F.3d 242,
270 (3d Cir. 2009) (“confident, unhedged denials”)).

1 **5. The Core Operations Doctrine Does Not Apply**

2 The core operations inference remains inapplicable. Mot. at 22-23; Order at *11-12. As to
3 the first prong of the doctrine, as noted in the Motion, the FAC’s new “admissions” are deficient in
4 several respects, including that they were made well before the Class Period and referred to
5 monitoring inventory sold into NVIDIA’s *channel* (comprised of distributors and resellers), not
6 end-user data. Mot. at 22-23. The Opposition fails to address those flaws. Rather, Plaintiffs simply
7 regurgitate their allegations and cite a case that presented inapposite facts. Opp. at 16-17; *S. Ferry*,
8 687 F. Supp. 2d at 1260 (contemporaneous admissions “displayed an intimate knowledge” of key
9 facts); *cf. In re Nektar Therapeutics*, 2020 WL 3962004, at *13 (N.D. Cal. July 13, 2020) (no
10 “detailed involvement” with relevant data where plaintiffs failed to allege “there existed reasonably
11 accessible data within the company materially contradicting those statements” when made).

12 As to the second prong, Plaintiffs again essentially argue that gaming is NVIDIA’s core
13 business, which this Court already held does not suffice. Order at *12. In an effort at a new spin,
14 the Opposition contends that revenue derived from GeForce (reported in the Gaming segment) in
15 China alone was enough to support core operations. Opp. at 16. But even if FE-1’s allegations are
16 credited (which they should not be, *see* Mot. at 18-19) and the Court were to assume that crypto-
17 related sales of GeForce in China at some point accounted for 14-20% of worldwide revenue (*see*
18 *supra* p. 5), this would not make it “‘absurd’ to suggest that management was without knowledge
19 of the matter.” *S. Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 786 (9th Cir. 2008); *Okla. Firefighters*
20 *Pension & Ret. Sys. v. Ixia*, 2015 WL 1775221, at *30 (C.D. Cal. Apr. 14, 2015) (deferred earnings
21 from contracts that were “less than 20%” of revenue “insufficiently substantial”); *Lloyd v. CVB*
22 *Fin. Corp.*, 2012 WL 12883522, at *27 (C.D. Cal. Jan. 12, 2012) (failure to disclose “troubled”
23 loans that “represented 14%” of portfolio not enough for core operations). To the contrary,
24 Plaintiffs have not even tried to challenge Defendants’ consistent statements that crypto-related
25 GeForce sales were “difficult to quantify” and could not be “visibly count[ed].” Mot. at 23.

26 **6. Plaintiffs’ Theory Of Fraud Is Less Compelling Than The Nonculpable**
27 **Explanation**

28 Plaintiffs’ theory, as alleged in the FAC, is that Defendants dramatically increased sales of

1 GeForce chips into the channel during the Class Period, knowing that there was not enough gaming
2 demand to absorb it and that the decline of mining demand was “*inevitable*.” (¶ 162.) Given that
3 this makes no sense, it is perhaps not surprising that Plaintiffs disavow it in the Opposition.
4 Plaintiffs now assert that Defendants increased GeForce supply to “capitalize on the cryptocurrency
5 boom” “by selling GeForce GPUs to miners,” and argue that inventory built up in the fall of 2018
6 because demand from miners “vanished” in mid-2018. Opp. at 18. Even as modified, Plaintiffs’
7 theory assumes Defendants sold massive quantities of GeForce chips into the channel based on
8 nothing more than a hope and a prayer that mining demand would somehow miraculously reappear
9 and absorb the excess supply. Yet Plaintiffs offer no plausible reason why Defendants would have
10 taken that risk as Ether prices (and thus mining demand) were declining, rather than simply easing
11 up on GeForce sales into the channel.¹⁶ (See Ex. FF; ¶¶ 54-55.) The excess supply was bound to
12 catch up with NVIDIA in short order, when the channel simply stopped buying GeForce chips.

13 And what would Defendants have gained by postponing the “inevitable” for a few months?
14 It is no answer to speculate (as Plaintiffs do) that Defendants wanted to avoid investor “skepticism.”
15 Opp. at 18. The Ninth Circuit has firmly rejected efforts to plead motive to commit securities fraud
16 based on such generic allegations of universal corporate desires (e.g., to perform well and maintain
17 stock value). See *Lipton*, 284 F.3d at 1038; *In re Peregrine Sys., Inc. Sec. Litig.*, 2005 WL 8158825,
18 at *64 (S.D. Cal. Mar. 30, 2005). Plaintiffs otherwise do not identify any motive for Huang, Fisher,
19 or Kress to lie to the market, which “significantly undermine[s]” their theory. *Bodri v. GoPro, Inc.*,
20 252 F. Supp. 3d 912, 933 (N.D. Cal. 2017). They do not allege that any Individual Defendant
21 received a financial benefit and cannot explain why NVIDIA would undertake a \$1.77B stock
22 *buyback* program during the Class Period.¹⁷ Mot. at 17.

23 **B. Plaintiffs Have Failed To Allege Falsity**

24 As before, Plaintiffs’ falsity allegations rely “entirely” on Prysm’s speculative revenue
25 estimates. Order at *7. But, despite a clear roadmap from the Court (Order at *7-9), Plaintiffs have

26 ¹⁶ And Plaintiffs’ theory is impossible to square with Defendants’ repeated statements opining that
27 there was unmet demand from gamers. (E.g., Ex. X at 3-5 (incorporated by reference, Order at *5).)

28 ¹⁷ Plaintiffs argue buybacks do not “categorically” negate scienter, Opp. at 17 n.9, but their sole
authority is a case where a repurchase was part of the alleged fraud. Cf. *No. 84 Employer-Teamster
Joint Council Pension Tr. Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 928 (9th Cir. 2003).

1 not filled the gaps in their Prysm allegations. This alone suffices to dismiss the FAC with prejudice.
2 Plaintiffs have also otherwise failed to assert well-pled factual allegations that any of the challenged
3 statements were false or misleading when made. That failure is also independently fatal to the FAC.

4 **1. Plaintiffs Still Have Not Cured The Pleading Deficiencies As To Prysm**

5 Plaintiffs argue, repeatedly, that the Court should accept Prysm’s estimates because some
6 of their assumptions are allegedly “conservative.” Opp. at 2-5, 22-26. All that means is that Prysm
7 could have altered *some* of its assumptions to generate even higher and even less reliable and more
8 unfounded estimates. In any event, simply saying “conservative” is not a route to circumvent the
9 PSLRA. The question is whether Plaintiffs have alleged “with sufficient particularity that [Prysm]
10 was *in a position to* know the relevant fact claimed: here, how much of Defendants’ revenues relied
11 on crypto-mining.” Order at *7. This is the same standard applied “to evaluate facts alleged to have
12 originated with any [confidential witness].” *Id.* In that regard, for all the reasons set forth below, if
13 a CW were to simply assert what Prysm asserts here, there is no question that the allegations would
14 fail under the PSLRA. *See, e.g., Brodsky v. Yahoo! Inc.*, 592 F. Supp. 2d 1192, 1201-02 (N.D. Cal.
15 2008) (declining to credit CWs’ revenue “estimates” absent allegations of relevant responsibilities
16 or “first-hand knowledge”). The conclusion here should be the same.

17 **a. Still No Review Of Relevant NVIDIA-Specific Information**

18 As Defendants noted in the Motion, the FAC still does not “indicate any sort of interaction
19 between Prysm and former or current NVIDIA employees or review of its financial data.” Mot. at
20 28 (quoting Order at *8). While Plaintiffs cite a handful of items Prysm allegedly considered (Opp.
21 at 27-28), these fail to show Prysm was “in a position to know” the amount of NVIDIA’s revenue
22 driven by mining. For example, Plaintiffs list several FE allegations (*id.*), but Plaintiffs do not
23 suggest that Prysm in fact interacted with any FE, and no FE allegation comes close to supporting
24 the mountain of technical assumptions underlying Prysm’s estimates. Mot. at 17-22.

25 Plaintiffs also argue that Prysm reviewed the MSRP of various GeForce models. Opp. at
26 27. But far from showing that Prysm was “in a position to know” how much of NVIDIA’s revenue
27 was driven by mining, this actually shows the opposite: the MSRP (the price NVIDIA
28 recommended that retailers charge end customers) provides little, if any, insight into the amount of

1 revenue earned by NVIDIA when it sold GeForce chips to its channel partners far upstream from
2 the end users. Accordingly, Prysm had to make an (essentially arbitrary) assumption about the
3 relationship between NVIDIA's revenue and the MSRP. *Id.*; ¶ 151. Other observers made different
4 assumptions about that very fact. (¶ 153 & n.15.) Plaintiffs also fail to explain how Prysm's review
5 of NVIDIA's publicly reported revenue (Opp. at 27; ¶¶ 153-54) informed its estimate of unreported
6 mining revenue, or supports any of the assumptions underlying Prysm's estimates. Finally, the
7 internal China presentation is of limited relevance. Mot at 27-28; *see also infra* p. 15. Indeed, the
8 FAC is not clear if Prysm actually used that presentation in its analysis or merely looked at it (Mot.
9 at 24-25), and the Opposition sheds no light on this. Opp. at 27 (Prysm "examined" presentation).

10 **b. Market Share Data Still Unreliable**

11 As this Court previously recognized, market share is a critical input for Prysm's revenue
12 estimates. Order at *8-9. Plaintiffs nevertheless admit that, instead of explaining "why Prysm's use
13 of general ***gaming*** GPU market share data reliably indicated NVIDIA's share of the ***mining***
14 market" (as directed in the Order, Opp. at 19), Plaintiffs simply replaced their prior market share
15 allegations with new ones. Opp. at 19; Mot. at 24. Plaintiffs also admit that, despite the alleged
16 change in market share data, Prysm's quarterly revenue estimates remain precisely the same, to the
17 dollar. *Id.* Plaintiffs wave off this debilitatingly suspicious coincidence by asserting that Prysm did
18 not "alter" any assumptions (Opp. at 19 n.11), but this is no response at all. Plaintiffs do not suggest
19 that NVIDIA's mining market share was, in fact, the same as (or even similar to) its share of the
20 gaming market (which would be another unlikely coincidence), but offer no other explanation for
21 how the change did not "alter" any of Prysm's conclusions. Plaintiffs' obfuscation on this is reason
22 enough for the Court to reject their revised Prysm allegations. *See, e.g., Hernandez v. Schaad*, 2017
23 WL 6731624, at *3 (N.D. Cal. Dec. 29, 2017) (prior allegations part of "'context-specific' inquiry"
24 in assessing amended complaint); *In re YogaWorks, Inc. Sec. Litig.*, 2020 WL 2549290, at *3 (C.D.
25 Cal. Apr. 23, 2020). So is the fact that Prysm's estimates of mining revenue cannot be reconciled
26 or reproduced with the new "assumptions" pled—as Plaintiffs do not dispute, "conservative" or
27 not, Prysm's own stated math just does not add up. Mot. at 29 n.20; Opp. at 25 n.14.

28 But even setting these issues aside, as discussed below, Plaintiffs fail to articulate why

1 Prysm’s revised market share assumption is any more reliable than the one proffered in the CAC.¹⁸

2 **Inconsistency of Market Share “Sources”:** Plaintiffs argue that Prysm’s market share
3 assumption is reliable because it is based on three supposedly “consistent” sources: the Peddie
4 Report, the RBC report, and the internal China presentation. Opp. at 24-25. Each of these “sources”
5 offers nothing more than guesses (*see infra* pp. 14-15)—and guesses do not satisfy the PSLRA, no
6 matter how many people make them. In any event, Plaintiffs’ argument fails in its own right,
7 because here the guesses diverge. The RBC report generally quotes 75%, the China presentation
8 generally quotes 70%, and the Peddie Report quotes a cumulative share through Q4 2017 of 69%
9 and a quarterly share during Q4 2017 of just 64%.¹⁹ Opp. at 21. Plaintiffs do not grapple with the
10 fact that these drive disparate revenue estimates that can vary by hundreds of millions of dollars.

11 Plaintiffs’ “consistency” argument also ignores that Prysm’s purported sources are
12 inconsistent with *Prysm’s analysis*. For example, Prysm allegedly assumed a steady mining market
13 share of 69% across the Class Period. But Peddie estimated that NVIDIA’s mining market share
14 dropped sharply early in the proposed Class Period, from 71.6% in Q3 2017 to 64.4% in Q4 2017,
15 while AMD’s share was increasing.²⁰ Mot. at 26; Ex. HH at 10-11. Unable to harmonize Peddie’s
16 opinions with Prysm’s, Plaintiffs suggest that the Court could still find falsity pled if Prysm had
17 assumed that NVIDIA’s mining share was 64.4%.²¹ Opp. at 22. But Plaintiffs offer no reason to

18
19 ¹⁸ Plaintiffs contend that Prysm’s analysis is “sufficient at the pleading stage,” citing *In re Resonant*
20 *Inc. Sec. Litig.*, 2016 WL 6571267, at *5 (C.D. Cal. July 11, 2016). Opp. at 25, 27. But unlike here,
21 in *Resonant* the expert’s opinion was based *solely* on the company’s “public filings and
22 communications” and the defendants did not argue the information contained in those sources was
23 unreliable. *Id.* Further, there the expert “only serve[d] to buttress the other factual allegations.” *In*
24 *re Resonant Inc. Sec. Litig.*, 2016 WL 6603953, at *3 (C.D. Cal. Sept. 6, 2016) (“It would be
25 unreasonable for securities action plaintiffs to make conclusory references to the findings of
26 purported experts” to meet Rule 9(b) and the PSLRA). Here, Plaintiffs depend entirely on Prysm.

27 ¹⁹ Plaintiffs admit that the Peddie Report market share estimates referenced in the FAC (69.4% and
28 68.6%) are cumulative for Q1 of calendar 2015 through Q3 and Q4 of calendar 2017, respectively.
Opp. at 21. They do not reflect Peddie’s market share estimate for any quarter. *Id.*; Mot. at 26.

²⁰ Plaintiffs do not deny that, in response to the Court’s finding that Prysm’s conclusion was
“clouded” by allegations that miners “preferred” GPUs made by AMD, Plaintiffs simply deleted
those allegations. Mot. at 12-13. Peddie amplifies, not “addresses,” this cloud. Opp. at 20-21.

²¹ Plaintiffs argue they need not allege the “precise” amount of crypto-related revenue and rely on
cases about accounting irregularities (allegations not present here). Opp. at 24-25. But Defendants
ask for *reliability* (the standard for pleading expert opinions), not “exactitude.” Plaintiffs’
authorities, which hold that a GAAP violation may be alleged with the “approximate amount” of
affected revenue plus reliable witness accounts, are completely off base. *See In re Daou Sys., Inc.*,

1 think that the downward trajectory traced in the Peddie Report bottomed out there (and Plaintiffs’
2 willingness to discard Prysm’s “analysis” underscores its lack of reliability). Nor do Plaintiffs
3 explain how RBC’s 75% market share estimate provides “empirical support” for Prysm’s lower
4 guess. Opp. at 22-23. Plaintiffs downplay the gap’s size, but then point to it to explain why RBC
5 and Prysm’s estimates of NVIDIA’s mining revenue are so far apart (\$230m, *see* Order at *9).

6 **Prysm’s “Sources” Not Reliable:** As Plaintiffs’ falsity allegations “rely entirely” on
7 Prysm’s revenue estimates, those allegations cannot be credited unless Prysm’s mining market
8 share assumption is reliable. And absent facts showing that any Prysm source itself “reliably
9 indicates” NVIDIA’s mining market share (Order at *8), this part of Prysm’s analysis fails, as it
10 amounts to piling one unsupported opinion on top of another. Plaintiffs have alleged no facts
11 showing that any of Prysm’s sources “reliably indicated” NVIDIA’s share of the mining market.

12 Plaintiffs concede that the Peddie Report is not a “fact” based on personal knowledge, but
13 just another third party’s opinion (based on a “proprietary analytic model”) and thus subject to the
14 same reliability standard as Prysm itself. Mot. at 25. Plaintiffs argue that Defendants have cited
15 Peddie’s gaming industry data in the past (Opp. at 20), but this has no bearing on whether Peddie
16 had any reliable basis for estimating market share in an entirely new and different market. Plaintiffs
17 do not allege that NVIDIA ever cited, much less adopted, Peddie’s guess about *mining*.²² And
18 while Plaintiffs inexplicably deny it, it is clear that Peddie illogically assumed that any increase in
19 quarterly sales (above a baseline that Peddie did not explain) was caused *entirely* by sales to miners.
20 Mot. at 26-27. Plaintiffs can offer no other interpretation of Peddie’s statement that: “We then took

21 _____
22 411 F.3d 1006, 1016-19 (9th Cir. 2005) (GAAP violation alleged through CW statements with “a
23 large degree of specificity,” including direct interactions with defendants); *In re Wash. Mut., Inc.*
24 *Sec., Derivative & ERISA Litig.*, 694 F. Supp. 2d 1192, 1209-10, 1214, 1222 (W.D. Wash. 2009)
(GAAP violation alleged through internal memo and statements from 80 CWs).

25 ²² Plaintiffs argue that *In re Silicon Storage Tech., Inc.* is inapt because that case involved market
26 share data that was not specific to the defendant’s products, while “Prysm analyzed data that
27 encompassed NVIDIA’s crypto-related sales.” Opp. at 21 n.13 (citing 2007 WL 760535 (N.D. Cal.
28 Mar. 9, 2007)). Plaintiffs do not identify what that data was, but in any event *Silicon Storage* applies
in full force. Peddie’s market share estimates are no more reliable—and shed no more light on
NVIDIA’s actual market share—than the data in *Silicon Storage*. *Id.* at *17; Mot. at 25-27. As in
Silicon Storage, the issue is further compounded by the unwarranted assumptions in Prysm’s
methodology. 2007 WL 760535, at *15-16; *infra* pp. 15-16. And as in *Silicon Storage*, Prysm’s
conclusion is not corroborated by “specific documents or statements by other witnesses.” *Id.* at *32.

1 that percentage [“deviation from normality”] and applied it to unit shipments to arrive at our
2 estimate for the number of AIBs that were bought for crypto mining.”²³ (Ex. HH at 11.)

3 Further, the Opposition does not cite any factual allegations that suggest the authors of the
4 RBC report were able to reliably estimate NVIDIA’s crypto market share. Opp. at 22-23. Plaintiffs
5 concede that Prysm and RBC made different assumptions about NVIDIA’s revenue per GPU (Opp.
6 at 22-23), yet another inconsistency which highlights that neither was “in a position to know.”

7 Finally, Prysm’s purported reliance on the China presentation screenshotted in the FAC
8 falls short, as nothing in the Opposition shows that one regional market share estimate in an internal
9 presentation (never allegedly provided to any Individual Defendant or signed off on by any
10 executive) constituted “*NVIDIA*’s internal estimate” of its crypto market share. Opp. at 23-24; Mot.
11 at 27-28. Plaintiffs do not dispute this presentation’s limited scope (four months in one region where
12 mining was “heavily concentrated”). As explained *supra* p. 5, *Nursing Home* does not suggest that,
13 under these facts, such data from a single market is sufficient.²⁴

14 **c. Prysm Still Makes Aggressive And Impossible Assumptions**
15 **About Computational Power**

16 The Opposition highlights that Prysm is not “in a position to know” two other key
17 assumptions incorporated into its analysis. Opp. at 26-27; Mot. at 28-29.

18 *First*, Plaintiffs fail to explain how Prysm can reliably assume that every GPU sold by
19 NVIDIA in any given quarter reached and was deployed by the end user in that same quarter, and
20 that therefore *zero* increase in computational power in a given quarter was due to GPUs purchased
21 in prior quarters. Mot. at 28-29. They argue it is “purely speculative” to expect that some “GPUs
22 added to the cryptocurrency networks analyzed may have been purchased in earlier quarters.” Opp.
23 at 26. It is not. Chips sold by NVIDIA into the channel can take months to reach end users. Mot. at
24 4; *see, e.g.*, Ex. P at 10 (NVIDIA “typically” has “between 6 to 8 weeks of inventory in the

25 _____
26 ²³ Plaintiffs suggest Defendants draw on disputed facts in making this argument. Opp. at 22. But
27 the Court “need not ‘accept as true allegations that contradict matters properly subject to judicial
28 notice.’” *Veal v. Lendingclub Corp.*, 2020 WL 3128909, at *4 (N.D. Cal. June 12, 2020).

²⁴ As to whether the 70% figure includes the Crypto SKU, the bar graph includes data for “GTX”
and “Minning [sic].” (¶ 121; Opp. at 23.) The separate estimate below that graph does not specify
whether “GPU sold to mining” encompassed both these categories. (¶ 121.)

1 channel.”). It is thus only logical to conclude that at least some GPUs added to cryptocurrency
2 networks in any given quarter were purchased beforehand. Plaintiffs postulate that miners would
3 promptly deploy new equipment (Opp. at 26), but this assumes the very thing Plaintiffs are tasked
4 to show—namely, that every GPU deployed for mining was purchased by dedicated miners, rather
5 than gamers who may have decided to mine while their GPUs would otherwise have been idle.

6 **Second**, Prysm assumes that miners and gamers are entirely distinct categories (despite that
7 Peddie recognizes the opposite). Mot. at 28-29. In the Opposition, Plaintiffs irrationally assume
8 that the rise in mining farms rendered any mining by gamers immaterial. Opp. at 26-27. Under the
9 PSLRA, Plaintiffs cannot simply guess that mining performed by gamers *must have been* de
10 minimis, without alleging *how much* mining was performed by farms.

11 **2. Plaintiffs Do Not Otherwise Adequately Allege Falsity**

12 As before, Plaintiffs’ failure to allege Prysm was “in a position to know” how much
13 NVIDIA Gaming revenue was mining-driven warrants dismissal. Order at *7-9. But as set forth in
14 the Motion (30-35), Plaintiffs’ falsity allegations fail on several other grounds, and the Opposition
15 (Opp. at 28-35) does not establish otherwise. We address the challenged statements below in
16 chronological order, but, before doing so, we address two issues that cut across multiple statements.

17 **Statements Must be Read in Context:** Plaintiffs repeatedly urge the Court to ignore the
18 context of the challenged statements. Opp. at 29-30. But the law is clear that such statements must
19 be evaluated “in the context in which they were made,” not just in isolation. *Guangyi Xu v.*
20 *ChinaCache Int’l Holdings Ltd.*, 2017 WL 114401, at *5 (C.D. Cal. Jan. 9, 2017); *see Omnicare,*
21 *Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 190 (2015); *Hussey v.*
22 *Ruckus Wireless, Inc.*, 263 F. Supp. 3d 781, 786 & n.5 (N.D. Cal. 2017). The law is equally clear
23 that this context includes not just the words immediately surrounding a challenged statement, but
24 also the defendants’ other disclosures.²⁵ *See City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*,
25 880 F. Supp. 2d 1045, 1066 & n.6 (N.D. Cal. 2012); *Avila v. LifeLock Inc.*, 2016 WL 4157358, at
26

27 ²⁵ In *Berson v. Applied Signal Technology, Inc.*, the defendants argued that investors would
28 understand a particular phrase (“uncompleted portions of existing contracts”) to imply something
not said (“stopped work”). 527 F.3d 982, 985-87 (9th Cir. 2008); Opp. at 29. Defendants are not
engaging in any such parsing exercise here.

1 *6 (D. Ariz. Aug. 3, 2016). For example, in *Shenwick* (which Plaintiffs cite liberally), the court
2 held that statements on an earnings call were not misleading when viewed in light of other
3 disclosures—in that call and *separate* SEC filings and earnings calls. 282 F. Supp. 3d at 1143-44.

4 **No Truth-on-the-Market Defense:** Plaintiffs also repeatedly wave off important context
5 by accusing Defendants of invoking a “truth-on-the-market” defense. Opp. at 32-33; Mot. at 31-
6 33; ¶¶ 179, 183, 190, 193, 203. Plaintiffs are conflating two very different arguments: a “truth-on-
7 the-market” defense is where defendants argue “that information has been made credibly available
8 to the market *by other sources*.”²⁶ *In re Apple Comput. Sec. Litig.*, 886 F.2d 1109, 1115 (9th Cir.
9 1989). It does not apply where defendants “argue that *they* disclosed all required information.” *In*
10 *re Intel Corp. Sec. Litig.*, 2019 WL 1427660, at *13 n.18 (N.D. Cal. Mar. 29, 2019). Here,
11 Defendants have asked the Court to consider the challenged statements in the context of other
12 statements *by Defendants* (many made in the very same document or transcript as the challenged
13 statements themselves), and they do so “not to assess whether the market was generally aware of
14 the truth and thus not affected by [an] allegedly false statement, but rather to resolve whether [the]
15 statements were even false.” *Curry v. Yelp Inc.*, 2015 WL 1849037, at *6 n.1 (N.D. Cal. Apr. 21,
16 2015); *see also Chang v. Accelerate Diagnostics, Inc.*, 2016 WL 3640023, at *5 (D. Ariz. Jan. 28,
17 2016). That is entirely proper (and, indeed, is required). Plaintiffs’ cited cases declining to apply
18 the “truth-on-the-market” defense at the pleading stage simply have no application here.

19 **Fisher’s 5/10/2017 Statement (¶ 176):** This Court previously found that, with his May 10,
20 2017 statement, Fisher was talking about the “fundamentals of PC gaming.” Order at *10. Plaintiffs
21 offer no reasoned defense for recasting this as a statement about GeForce revenue. Opp. at 35 n.19.
22 It was and still is a statement regarding the fundamentals of PC gaming. Further, Plaintiffs do not
23 dispute that his statement was an opinion. Plaintiffs nevertheless claim that the opinion was
24 somehow misleading because it did not reference miners buying GeForce in China. But that
25 argument fails as well, as the statement “did not concern China GeForce sales.” Order at *10.
26 Finally, Plaintiffs point to data they claim was somehow inconsistent with their reimagined working

27 ²⁶ Plaintiffs’ authorities reflect this. *Provenz v. Miller*, 102 F.3d 1478, 1492–93 (9th Cir. 1996)
28 (news articles and analyst reports); *In re Immune Response Sec. Litig.*, 375 F. Supp. 2d 983, 1037
(S.D. Cal. 2005) (industry conference presentation the defendants tried to suppress).

1 of Fisher’s statement; yet, that data not even exist on May 10, 2017. Opp. at 35; *see supra* n.1.

2 **Huang’s 8/10/2017 Statement:** Plaintiffs do not dispute that Huang’s challenged statement
3 on the 8/10/2017 earnings call provided a subjective estimate—*e.g.*, an *opinion*—but do not argue
4 they have met the *Omnicare* standard.²⁷ (¶ 179, Ex. C at 7 (“we serve the vast—*I would say, the*
5 *large* majority” of mining demand from the Crypto SKU)); *see City of Dearborn Heights Act 345*
6 *Police & Fire Ret. Sys. v. Align Tech., Inc.*, 65 F. Supp. 3d 840, 850 (N.D. Cal. 2014) (statements
7 estimating asset’s fair market value are opinions); *Dearborn*, 856 F.3d at 615-16; Opp. at 31-33;
8 Mot. at 31-32. And while Plaintiffs contend that Huang suggested that at most a “small amount” of
9 GeForce sales were made to miners (Opp. at 33), the proper context still belies this. On the August
10 10 call, Defendants told investors that the quarter had seen an increase in mining activity, miners
11 continued to buy GeForce, there were GeForce “shortages all over the world,” and they believed
12 there was unmet gamer demand. (Ex. C at 4, 7.) Similarly, while Plaintiffs repeat the notion that
13 “analysts took from [Huang’s] statements that GeForce sales to miners were minimal” (Opp. at 29),
14 they cannot deny that analysts attributed significant amounts of Gaming revenue to mining after
15 this call (Mot. at 6-8; Ex. E (\$100m)), and later calls (Exs. K, L, S, Q, R (as much as \$400m)).

16 **Statements in Form 10-Qs (¶¶ 187, 200):** Plaintiffs do not contest that statements
17 attributing increased GPU revenue “primarily to increased revenue from sales of GeForce GPU
18 products for gaming” referred to what those GPUs were designed and marketed for, not to specific
19 end users. Mot. at 32-33. Plaintiffs argue, though, that the statements were false because Defendants
20 sought to sell GPUs to mining farms. Opp. at 34-35. But the FAC does not allege that Huang’s
21 discussions about a sale to Genesis Mining pertained to sales of GeForce chips (as opposed to the
22 Crypto SKU).²⁸ Mot. at 24 n.18; ¶ 88. And in any event, any sale of some GeForce chips to mining
23 farms does not change the fact that GeForce chips were “marketed” for gaming.

24 **Kress’s 11/9/2017 Statement (¶ 193):** *First*, Plaintiffs continue to insist Kress represented

26 ²⁷ The same is true for the first portion of Huang’s 8/12/2017 *VentureBeat* statement. (¶ 183, Ex. D
27 at 3 (“*only a couple hundred million dollars, maybe* \$150 million or so”).) Plaintiffs have
apparently abandoned their challenge to the rest (“our core business is elsewhere”). Mot. at 32.

28 ²⁸ The Company disclosed that the Crypto SKU was “targeted for use in cryptocurrency mining.”
(Exs. G at 27; N. at 26.)

1 “crypto-related revenue” was \$70m (corresponding to Crypto SKU revenue in OEM) and implied
2 zero crypto revenue in Gaming. Opp. at 32. But they simply ignore the fact that she was answering
3 a question *about OEM revenue*. Mot. at 33; Ex. J at 11. **Second**, Kress also stated that some mining
4 demand was met with GeForce cards, but the amount was “difficult to quantify.” (Ex. J at 4.)
5 Plaintiffs argue that this statement (and other similar statements) “furthered” the “deception.” Opp.
6 at 31. How? Plaintiffs never explain. Defendants’ explanation that crypto-related GeForce sales
7 were “difficult to quantify” simply contextualized their attempts at estimating them.

8 **Huang’s 11/10/2017 Statement (¶ 196):** Plaintiffs argue that Huang’s November 2017
9 statement in *VentureBeat* was not an opinion because he did not use specific magic words. Opp. at
10 30. Huang’s response reflected his subjective views about the future impacts and import of mining;
11 no magic “opinion” words are needed. Mot. at 33-34; *Martin v. Quartermain*, 732 F. App’x 37, 40
12 n.1 (2d Cir. 2018) (“projections about the future are quintessential opinion[s]”); *Gregory v. ProNai*
13 *Therapeutics Inc.*, 297 F. Supp. 3d 372, 406 (S.D.N.Y. 2018) (opinions “include subjective
14 statements that reflect judgments as to values that are not objectively determinable”). Plaintiffs
15 have not alleged “*particular* (and material) facts” omitted that rendered his opinion “misleading to
16 a reasonable person reading the statement fairly *and in context*.” *Dearborn*, 856 F.3d at 615-16.

17 Plaintiffs also fail to show that this statement is not forward-looking. Opp. at 30-31. Huang
18 stated: “*It’s going to remain small for us. . . . It’s large for somebody else. But it is small for us.*”
19 (Ex. at M at 3-4; Mot. at 33-34.) The subject of Huang’s statement was clearly his projection of
20 *future* crypto revenue, relative to the size of the Company. Any implicit reference to present
21 conditions does not affect whether it is forward-looking. *See Waterford Twp. Police v. Mattel, Inc.*,
22 321 F. Supp. 3d 1133, 1150-51 (C.D. Cal. 2018) (“[T]his kind of reliance on present
23 conditions . . . to make a projection is ‘implicit in any forward-looking statement.’”).

24 **Kress’s 11/29/2017 Statement (¶ 203):** Plaintiffs assert, without explanation, that this
25 statement—which begins with “*we do believe*”—is not an opinion. Opp. at 33 n.18; Mot. at 34; Ex.
26 O at 13. The statement is quintessential opinion, and Plaintiffs have failed to meet the high bar of
27 pleading an *Omnicare* omission. *Dearborn*, 856 F.3d at 615-16; Ex. O at 13 (explaining in same
28 response that NVIDIA could not “visibly see” or “visibly count” GeForce crypto revenue).

1 **Huang’s February and March 2018 Statements (§§ 207, 210, 213):** Plaintiffs again argue
2 that these were not opinions solely because Huang did not preface them with “I think” or “I
3 believe.” Opp. at 30. Such magic words are not required by the law. *See supra* p. 19. Plaintiffs fail
4 to identify facts “whose omission [made Huang’s statements] misleading to a reasonable person
5 reading the statement fairly and in context.” *Dearborn*, 856 F.3d at 616. Indeed, Huang
6 acknowledged the “real” impact of cryptocurrency on NVIDIA’s business. (§ 207; Ex. T at 1.)
7 Plaintiffs also fail to refute the plainly forward-looking nature of Huang’s answer to a question
8 about whether it was possible in the future to “maintain” the cryptocurrency “run rate” and the
9 value of NVIDIA stock: “I think *over the long term*, cryptocurrency *will* still be here, but our four
10 growth drivers [are] *what’s going to* make NVIDIA ten times larger.” (§ 213; Ex. Y at 3 (“I *expect*
11 cryptocurrency *to be* an important driver for GPUs”).) Finally, Plaintiffs contend that Huang’s
12 statements were not inactionable corporate optimism (Opp. at 30), but say nothing about their
13 content, and cite no authority holding that statements cannot be inactionable corporate optimism if
14 made in response to media questions or if the company’s stock price dropped later.

15 **Huang’s 8/16/2018 Statement (§ 216):** Plaintiffs do not dispute that Huang’s statement
16 about NVIDIA’s “master[y]” of its “channel” was inactionable corporate optimism, nor do they
17 distinguish the cited pertinent authority.²⁹ Mot. at 35.

18 **C. Plaintiffs’ Control Person Claim Still Fails**

19 Fisher’s status as a “prominent” executive does not make him a “control person.” Opp. at
20 35. The only case Plaintiffs cite involves C-suite executives, two of whom orchestrated “dog and
21 pony shows” to conceal product problems, and *none of whom disputed control person liability*. *In*
22 *re Aqua Metals, Inc. Sec. Litig.*, 2019 WL 3817849, at *9-10 & n.4 (N.D. Cal. Aug. 14, 2019).

23 **III. CONCLUSION**

24 The FAC should be dismissed with prejudice.

25 ²⁹ In arguing that Huang’s statement “perpetuated” a “falsehood” about crypto-related sales (Opp.
26 at 33), Plaintiffs fail to grapple with the fact that it was classic puffery, which as a matter of law is
27 too vague to rely on. *In re Snap Inc. Sec. Litig.*, 2018 WL 2972528 (C.D. Cal. June 7, 2018) is
28 inapt. There, the court rejected the defendants’ argument that the truth had already been disclosed
by media reports because in a subsequent S-1 filing the defendants “unequivocally” directed
investors not to consider information in the media published by third parties. *Id.* at *7.

1 Dated: September 14, 2020

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